

1 Honorable Barbara J. Rothstein  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

9 FREDRICK and ANNALESA THOMAS; and  
10 JO-HANNA READ, as Guardian ad Litem of  
11 E.T., a minor,

12 Plaintiffs,  
13 v.  
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JASON CANNON; BRIAN MARKERT;  
15 RYAN MICENKO; MICHAEL WILEY;  
MICHAEL ZARO; CITY OF FIFE; CITY OF  
LAKEWOOD; and PIERCE COUNTY  
METRO SWAT TEAM,

16 Defendants.

17 FREDRICK THOMAS and ANNALESA  
18 THOMAS, as Co-Administrators of the Estate  
of Leonard Thomas, and its statutory  
19 beneficiaries,

20 Plaintiffs,  
21 v.  
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BRIAN MARKERT; MICHAEL WILEY;  
NATHAN VANCE; MICHAEL ZARO;  
SCOTT GREEN; JEFF RACKLEY; CITY OF  
FIFE; CITY OF LAKEWOOD; PIERCE  
COUNTY METRO SWAT TEAM; and JOHN  
DOES 1 through 10,

23 Defendants.

24 Nos. 3:15-05346 BJR  
3:16-cv-05392  
CONSOLIDATED CASES

25 DECLARATION OF ERIK HEIPT IN  
SUPPORT OF PLAINTIFFS' PETITION  
FOR REASONABLE ATTORNEYS' FEES  
AND COSTS

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27 DECLARATION OF ERIK HEIPT RE:  
MOTION FOR FEES AND COSTS - 1

No. 3:15-05346 / 3:16-cv-05392

10633.1 kg311403

MACDONALD HOAGUE & BAYLESS  
705 Second Avenue, Suite 1500  
Seattle, Washington 98104  
Tel 206.622.1604 Fax 206.343.3961

1 My name is Erik J. Heipt. I am over 18 and competent to declare the following:

2 1. I am a principal at the law firm of Budge & Heipt PLLC in Seattle. I received my  
3 undergraduate degree from the University of Colorado in 1991 and my law degree from  
4 Willamette University College of Law in 1994.

5 2. My law practice focuses on plaintiff's civil rights litigation in both federal and  
6 state courts in Washington and in federal courts across the nation. We focus almost exclusively  
7 on civil rights cases against law enforcement resulting in death or catastrophic injuries. We have  
8 been representing families of citizens who have been killed by the police or in the correctional  
9 setting for nearly two decades. I have handled numerous civil rights cases against law  
10 enforcement in all aspects of litigation, including at least 10 in-custody and police-caused death  
11 cases, as well as multiple non-lethal cases involving police shootings, restraint-related asphyxia,  
12 use of chemical agents, and other forms of excessive force, which resulted in severe or life-  
13 threatening injuries.

14 3. I am familiar with the hourly rates customary for plaintiff's civil rights litigation  
15 attorneys in the State of Washington. In the Western District of Washington, the typical hourly  
16 rates for plaintiff's civil rights litigation attorneys ranges from \$325 per hour to over \$600 per  
17 hour. My own current hourly rate is \$500 per hour, and I am billing at that rate for this  
18 declaration and review.

19 4. I am professionally acquainted with the lawyers for the individual plaintiffs in this  
20 case. I am personally familiar with their work and have consulted with them and sought their  
21 expertise in a wide variety of issues in excessive police force cases. I am also well aware of their  
22 professional reputations. In the field of civil rights litigation, the attorneys at MacDonald,  
23 Hoague & Bayless are considered the gold standard. Tim Ford, David Whedbee, and Tiffany  
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DECLARATION OF ERIK HEIPT RE:  
MOTION FOR FEES AND COSTS - 2

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1 Cartwright, in particular, are *highly* respected in the civil rights legal community. It would be  
 2 difficult to find a litigation team with more knowledge, skill, and experience to handle a complex  
 3 civil rights case like this one. I believe that the hourly rates of \$600 per hour for Tim Ford, \$425  
 4 per hour for David Whedbee, and \$350 per hour for Tiffany Cartwright are more than reasonable  
 5 and comfortably comport with market rates in this jurisdiction.  
 6

7       5. Civil rights litigation is often very labor intensive and time consuming. This is  
 8 particularly true in excessive force cases against municipal entities and individual officers and  
 9 officials. These cases are even more labor intensive and time consuming than other civil rights  
 10 matters. Common issues, such as establishing *Monell* liability and defending qualified immunity  
 11 challenges, for example, which are unique to these cases, require a great deal of time and  
 12 attention. Shooting cases add another layer of complexity and require the retention and use of a  
 13 variety of professional experts. This complexity is further compounded in cases involving the  
 14 death of the victim. Prosecuting such cases is especially difficult because many or most of the  
 15 witnesses are law enforcement officers who are adverse to the plaintiff's case. Wrongful death  
 16 cases are further complicated by the challenges in establishing damages to the individual  
 17 surviving family members and the standards required to obtain punitive damages. Litigating  
 18 excessive police forces case involving death or catastrophic injury to trial (or even close to trial)  
 19 can require several thousand hours of attorney time, including pre-trial investigative work,  
 20 discovery, working with a wide range of experts, motions practice, and trial preparation.  
 21

22       6. My law partner are I are both heavily involved in each of our complex civil rights  
 23 cases, from beginning to end. Over the years, we have handled multiple complex civil rights  
 24 cases that required well over 2000 hours of combined attorney time. I can think of three  
 25 examples in the last five years alone. In 2012-2013, for example, we litigated the case of  
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1       *Torgerson v. Leavit, et al.*, No. 2:11-cv-00900-RAJ, a civil rights case involving an individual  
 2 who sustained traumatic brain injuries during an arrest. In that case, we sued the City of Seattle  
 3 and more than a dozen individual SPD officers and took numerous depositions. The case settled  
 4 close to trial for \$1.75 million. Although we did not litigate the case through the end of trial, my  
 5 law partner and I spent over 2,500 hours on the case. We spent a comparable number of hours in  
 6 a 2014-2015 civil rights case involving a King County resident who was shot 16 times,  
 7 *Theoharis v. Rongen, et al.*, No C13-1345-RAJ, which ultimately settled for \$5.5 million shortly  
 8 before trial. We are currently litigating a federal civil rights death case in the Eastern District of  
 9 Colorado, *The Estate of John Patrick Walter v. Correctional Healthcare Companies, Inc.*, No.  
 10 16-cv-00629, in which our attorney hours have already exceeded 2,500 and will easily exceed  
 11 3,000 hours by the end of trial.

12       7.      I am generally familiar with the present case and have reviewed the complaint, the  
 13 pretrial order, the opening statements, the jury instructions, and the verdict form. I have also  
 14 followed the lawsuit and informally consulted with plaintiffs' counsel about it on several  
 15 occasions. From these documents (and based on my prior familiarity with the lawsuit), I believe  
 16 this to be one of the most legally and factually complex police misconduct cases ever tried in this  
 17 district. Based on my experience, I believe that the total of 2,233 hours of attorney time and  
 18 1,956.3 hours of investigative and paralegal time included in plaintiffs' billing is reasonable and  
 19 in accordance with what I would expect in this type of case. Indeed, the result itself demonstrates  
 20 considerable time and effort on the part of the plaintiffs' attorneys. My law firm has litigated  
 21 these cases for nearly two decades, and our highest verdict in a police shooting case to date is \$8  
 22 million dollars.

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 DECLARATION OF ERIK HEIPT RE:  
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1       8. It is important to keep in mind that civil rights litigation of this nature is not only  
 2 specialized, but it is also highly risky. Cases against the police, no matter how strong they may  
 3 appear on paper, are among the most difficult to win at trial. Because few plaintiffs can pay by  
 4 the hour, the vast majority of these cases are handled on a contingency fee basis. Unlike private  
 5 defense attorneys, who are guaranteed prompt payment at an hourly rate, win or lose, plaintiff's  
 6 civil rights attorneys sometimes end up with no payment at all for their work. This can happen  
 7 even if the attorney has devoted hundreds (or thousands) of hours and has advanced tens of  
 8 thousands of dollars in litigation costs that will never be recovered. In 2006, for example, my law  
 9 firm litigated a civil rights case before this Court. The case, *Barbee v. Jefferson County*, No.  
 10 C05-5005RBL, ultimately resulted in a defense verdict after a hard-fought jury trial. The suit was  
 11 meritorious and pursued in good faith, and it brought important issues of public concern to the  
 12 community's attention. My law partner and I devoted over one thousand hours to that case  
 13 (probably closer to 2,000), and we advanced tens of thousands of dollars in costs. Because we  
 14 lost the trial, however, we were not paid a dime for our work and never recovered any of the  
 15 advanced costs.

16       9. To accomplish the Congressional purpose in enacting the federal civil rights  
 17 attorney's fees statute—of enabling plaintiffs with potentially meritorious civil rights claims to  
 18 obtain competent counsel—the fees paid to counsel for plaintiffs who prevail on such claims  
 19 must compensate counsel for the time, risk, specialized study and training such cases require.  
 20 Based on my professional experience, I believe the rates sought by plaintiffs' counsel in this case  
 21 are consistent with this purpose.

22           I swear under penalty of perjury under the laws of the United States that the above is true  
 23 to the best of my knowledge.  
 24

25           DECLARATION OF ERIK HEIPT RE:  
 26 MOTION FOR FEES AND COSTS - 5

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1 DATED at Seattle, Washington, this 1<sup>ST</sup> day of August, 2017.  
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3 /s/ Erik Heipt  
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DECLARATION OF ERIK HEIPT RE:  
MOTION FOR FEES AND COSTS - 6

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## **CERTIFICATE OF SERVICE**

I certify that on the 1<sup>ST</sup> day of August, 2017, I filed the foregoing with the Clerk of Court using the CM/ECF System which will send notification of such filing to the following:

## Attorneys for All Defendants:

Richard B Jolley: rjolley@kbmlawyers.com  
Jeremy Culumber: jc Culumber@kbmlawyers.com

Attorneys for Plaintiffs (3:16-cv-05392 BJR):

John Connelly jconnelly@connelly-law.com  
Meaghan Driscoll mdiscoll@connelly-law.com

Attorneys for Plaintiffs (3:15-cv-05346 BJR):

Tim Ford timf@mhb.com  
David Whedbee davidw@mhb.com  
Tiffany Cartwright tiffanyc@mhb.com

s/Terri Flink  
Terri Flink, Legal Assistant

**DECLARATION OF ERIK HEIPT RE:  
MOTION FOR FEES AND COSTS - 7**

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